

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

FILED

JACK A. LOWE,

Petitioner,

v.

MIKE ADDISON, Warden,

Respondent.

APR 16 2009

WILLIAM B. GUTHRIE
Clark, U.S. District Court

By _____
Deputy Clerk

Case No. CIV 08-436-RAW-KEW

ORDER

This action is before the court on the respondent's motion to dismiss petitioner's petition for a writ of habeas corpus as barred by the statute of limitations. Petitioner, an inmate in the custody of the Oklahoma Department of Corrections who is incarcerated at Joseph Harp Correctional Center in Lexington, Oklahoma, attacks his conviction in Adair County District Court Case Number CF-1997-166 for First Degree Rape by Instrumentation, After Former Conviction of Two Felonies.

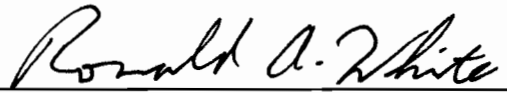
Petitioner clearly states on the first page of his petition that he is challenging Case No. CF-1997-166, and that on August 11, 1998, he was sentenced to imprisonment for 200 years plus one day. The respondent's brief in support of the motion to dismiss, however, confuses CF-1997-166 with petitioner's conviction in Adair County District Court Case No. 1997-126 for First Degree Burglary and Lewd Molestation. Respondent incorrectly asserts petitioner was found guilty of these two counts on August 11, 1998, when the conviction for No. 1997-126 was on June 21, 2000. In addition, all of the respondent's exhibits to his motion concern Case No. 1997-126, instead of the case at issue in this lawsuit. Petitioner's response to the

motion offers no assistance in clarifying his claim, alleging he is illiterate.

While the petition lists petitioner's convictions in Case No. CF-1997-126, it appears to the court that he is acknowledging that case as a prior conviction used to enhance his sentence in Case No. CF-1997-166. The court recognizes that the petition is difficult to navigate, but it expects the respondent to carefully review the pleading and respond appropriately.

ACCORDINGLY, the respondent's motion to dismiss petitioner's petition for a writ of habeas corpus [Docket #18] is DENIED, and the respondent is directed to file an answer within twenty (20) days to the allegations in the petition.

IT IS SO ORDERED this 16th day of April 2009.


RONALD A. WHITE
UNITED STATES DISTRICT JUDGE